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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,024	07/07/2006	John Montanti	51900-MONTANTI-004	4984
34325	7590	06/25/2009	EXAMINER	
STANLEY H. KREMEN 4 LENAPE LANE EAST BRUNSWICK, NJ 08816				YIP, WINNIE S
ART UNIT		PAPER NUMBER		
		3636		
			NOTIFICATION DATE	DELIVERY MODE
			06/25/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[uspto@patentsgroup.com](mailto:uspto@patentsgroup.com)

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/597,024	MONTANTI, JOHN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Winnie Yip	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 October 2008.  
 2a) This action is **FINAL**.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5,9-25,29-32 and 34-41 is/are pending in the application.  
 4a) Of the above claim(s) 9,18,23,32,34 and 39 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5,10-17,19-22,24,25,29-31,35-38,40 and 41 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

This is a first office action for application No. 10/597,024 which is filed under 35 U.S.C. 371 of international application No. PCT/US2006/024025 filed June 22, 2006.

Claims 1-5, 9-25, 29-32, and 34-41 have been pending in the application. And claims 6-8, 26-28 and 33 have been claimed.

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species:
  - a. Species A, shown in figures 1-11;
  - b. Species B, shown in figures 12-14;
  - c. Species C, shown in figures 15a -15e, 16a-16d, 17a-17b, 18a-18b; 22a-22c; 23a-23c; and 24.
  - d. Species D, shown in figures 20a-20d;
  - e. Species E, shown in figure 21.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search

queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

2. During a telephone conversation with Mr. Kremen on June 19, 2009 a provisional election was made with traverse to prosecute the invention of species C, shown in Fig. 15(a)-18(b), 22(a)-26(e), claims 1-5, 10-17, 19-25, 29-31, 34-38, and 40-41. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9, 18, 32, 39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Drawings***

3. The drawings are objected to under 37 CFR 1.84(m) because **Solid black shading** as shown in figures 1-24 are not permitted. It causes difficulty understanding of the disclosed invention. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

4. The drawings are objected to under 37 CFR 1.84(h)(1) because of the **exploded view**, i.e. Figures 18a, 18b, and 24 with the separated parts within the same figure, should be embraced by a bracket in order to show the relationship or order of assembly of various parts. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

6. Claim 25 is objected to because of the following informalities: the phrase "a handle a handle" should read "a handle". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-5, 9-25, 29-32, and 34-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In these claims, the claim elements "**means for supporting**", "**means for holding**", "**means for propping**", "**means for mounting**", and "**means for adjusting**" recite a means plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The written description (the specification) must clearly define each of these "means"

with what structure, material, or acts perform those claimed function. For example, the specification fails to define what structure or material such as "a tightening wig nut 16" or "bolt" or "clamps" that performs the claimed function of "means for mounting". Applicant is required to either delete the "means" plus function from the claim, or amended the specification to clearly define the term of "means" plus function. No new matter should be entered.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-5, 10-17, 19, 21-22, 24-25, 29, 29-31, 35-38, and 40-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Delacour et al. (US Patent No. 3,999,565).

In claims 1-5, 15-17, 29, 35-36: Delacour et al. teaches a cane or walking stick device (see Figures 1 and 2) comprising:

- a) a vertical shaft (11) providing a means for supporting the person while walking or standing, wherein the shaft (11) has a length being adjustable to a desired height by a knurled knob (13);
- b) a handgrip (17 or 17a) mounted on an upper portion of the shaft to provide a means for holding device by the person; and,
- c) a base (14) mounted at a lower end of the shaft to allow the device to rest on the floor.

d) a rigid padded protrusion (18) providing a means for propping the person's calf, ankle, foot, or leg while seated (see Fig. 3), wherein the propping means is padded by a resilient material and extended essentially perpendicular to the shaft at a location along its length.

In regard to claims 10, 11-14, 21-22, 24-25, 30-31, and 37-38, Delacour et al. further teach the protrusion (18) comprises a rigid mounting bracket (25) being pivotally attached to two mounting portions(sleeves) (19, 33) by a pivot pin (40), the two mounting portions being connected with link members (27, 28, 31-32) to provide two mounting points (19, 33) being adjustably connected to the shaft by a fastener means (20), and the rigid bracket (25) providing a resting portion, and a resilient padding (18) attached thereon.

In regard to claims 11, and 40-41, Delacour et al. teach the protrusion (18) being pivotally mounted to the mounting bracket by a pivot (40) such that the protrusion (18) can be entirely touch the shaft when the device is used to walk (see Fig. 4), or extended to provide a resting support thereon (see Fig. 3).

In regard to claim 19, wherein the base (14) inherently having an elastic slip tip.

11. Claims 1-5, 10, 12-17, 19-22, 24-25, 29-31 and 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Jih (US Patent No.5,524,657).

Jin teaches a cane (37) or walking stick device (see Figures7 and 8) comprising:

a) a vertical shaft (38) providing a means for supporting the person while walking or standing, wherein the shaft (38) is a tubular member having a circular cross section and having a length being adjustable to a desired height with a telescopic manner;

- b) a handgrip (no number) mounted on an upper portion of the shaft to provide a means for holding device by the person;
- c) a base (no number) mounted at a lower end of the shaft to allow the device to rest on the floor, wherein the base having multiple prongs.
- d) a rigid protrusion (25) having a curved bracket (31) providing a means for propping the person's calf, ankle, foot, or leg while seated (see Fig. 3), wherein the propping means is padded by a resilient material and extended essentially perpendicular to the shaft at a location along its length.
- e) the protrusion (25) being attached to a rigid mounting bracket (23), the rigid mounting bracket being pivotally and adjustably attached to the shaft (38) with at least two mounting point by two mounting clamps (33), the rigid bracket (25) providing a resting portion (31) having a resilient padding attached thereon.

In regard to claim 19, wherein the multiple prongs of base each having an elastic slip tip for resting on the floor.

12. Claims 1-5, 10, 12-17, 21-22, 24-25, 29-31 and 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hendik (DE 10056120).

Hendik teaches a cane or walking stick device (1) comprising:

- a) a vertical shaft (8) providing a means for supporting the person while walking or standing, wherein the shaft (38) is a tubular member having a circular cross section;
- b) a handgrip (no number) mounted on an upper portion of the shaft to provide a means for holding device by the person;

- c) a base (no number) mounted at a lower end of the shaft to allow the device to rest on the floor;
- d) a rigid protrusion (2) having a curved resting portion having a resilient padding (4) attached thereon, a rigid protrusion (2) providing a means for propping the person's calf, ankle, foot, or leg while seated, wherein the propping means is padded by the resilient material (4) and extended essentially perpendicular to the shaft at a location along its length.
- e) the protrusion (2) being attached to a rigid mounting bracket having two clamps (3), the rigid mounting bracket (3) providing a means for mounting the rigid protrusion (2) pivotally and adjustably to a desirable position along the shaft (8) by a clamp mechanism with at least two mounting points by bolts.

*Citations*

**13.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hartfield '288, Fismer '051, Bostelman'054, Chamblee '370, Curtis '013, Monte '715, and Anderson '084 teach various canes or walking stick devices comprising a means for propping a persons foot as similar to the claimed invention.

*Inquiry Contacts*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Winnie Yip/  
Primary Examiner,  
Art Unit 3636

wy  
June 19, 2009